

ORDERED.

Dated: December 02, 2020



Lori V. Vaughan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:)	
)	
Mark Andrew Shumbera)	Case No. 6:20-bk-00100-LVV
)	Chapter 13
Debtor.)	
_____)	

ORDER DENYING DEBTOR'S MOTION TO MODIFY CONFIRMED PLAN
(Doc. No. 35)

THIS CASE came before the Court on August 11, 2020 on Debtor's Motion to Modify Confirmed Plan (Doc. No. 35). Debtor seeks to modify his confirmed Chapter 13 Plan (Doc. No. 33). Creditor, U.S. Bank National Association ("U.S. Bank") objects arguing that the Debtor's balloon payment at the end of his plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I) which requires that periodic payments be made in equal monthly amounts. The Court agrees. Accordingly, the Motion must be denied.

Pursuant to 11 U.S.C. § 1325(a)(5) of the Bankruptcy Code¹, unless a secured creditor agrees to the treatment under the plan,² the debtor's plan must meet the requirements of §

¹ All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et. seq.*

² Because creditors do not vote on the plan in chapter 13, the Court deems lack of an objection as a creditor's agreement to the treatment under the plan.

1325(a)(5)(B) to be confirmed, i.e., the plan must provide that (i) the creditor retains its lien until discharge or payment of the debt, (ii) the creditor receives not less than the allowed amount of its claim, and (iii) if property to be distributed under the plan “is in the form of periodic payments, such payments shall be in equal monthly amounts....”

Here, the Debtor confirmed a plan that provided for modification of the U.S. Bank claim under the Court’s Mortgage Modification Mediation program. This allowed the Debtor to confirm a plan making only monthly adequate protection payments while the parties negotiated a mortgage modification. Mediation was unsuccessful and the Debtor could not modify his mortgage. The Debtor filed the Motion seeking to modify his plan by continuing to make monthly mortgage payments, but paying U.S. Bank’s prepetition mortgage arrears of \$28,805.53 in a lump sum with the final plan payment in month sixty.

The majority of courts considering this issue have ruled that Section 1325(a)(5)(B) of the Bankruptcy Code prohibits balloon payments unless the creditor consents. These courts reasoned that under the plain language of Section 1325 any periodic payments must be in equal monthly amounts – the antithesis of a balloon payment. *In re Sparks*, 509 B.R. 728, 729 (Bankr. M.D. Fla. 2014) (“On its face, the plain language of § 1325 appears to bar the Debtor’s proposed balloon payment.”); *In re Benedicto*, 587 B.R. 573, 575 (Bankr. S.D. Fla. 2018) (“As the last payment, the final payment will never be “recurring,” but it is still the last in a series of “periodic” payments and, therefore, must be equal in amount of the preceeding payment.”). Courts have also pointed to the legislative history of the 2005 revisions to Section 1325 as proof that Congress intended to prohibit balloon payments. *See, e.g., Sparks*, 509 B.R. at 730 (“When Congress passed BAPCPA in 2005, it added the “equal monthly amounts” language to § 1325 to prevent debtors from making balloon payments.”). However, a few courts disagree. Most

notably, the court in *In re Cochran*, 555 B.R. 892 (Bankr. M.D. Ga. 2016) allowed a balloon payment under Section 1325. The *Cochran* court ruled that a balloon payment by its very nature and definition is not a periodic payment, but a final payment of a different (much larger) amount and as such, is not subject to the requirement of equal monthly installments. *Id.* at 900. The Court rejects this reasoning.

The term “periodic payment” is defined in Black’s Law Dictionary as “one of a series of payments made over time instead of a one-time payment for the full amount.” *Periodic Payment*, BLACK’S LAW DICTIONARY (11th ed. 2019). A plan which provides for payments on a secured claim over time proposes periodic payments and accordingly those payments must be in equal monthly installments. A balloon payment is simply the last payment in a series of periodic payments. That it is the last in a series of payments and in a different amount does not exclude a balloon payment from the definition of a periodic payment. In fact, Black’s defines balloon payment as “a final loan payment that is usually larger than the preceding loan payments and that discharges the balance of the loan.” *Balloon Payment*, BLACK’S LAW DICTIONARY (11th ed. 2019).

Under § 1329(b), a modified plan must still meet the requirements of § 1325(a). *See also Benedicto*, 587 B.R. at 578 (“If a modified plan is approved, the payments to secured creditors must be in equal amounts after the modified plan takes effect....”). Here, the balloon payment proposed by the Debtor is not equal to the preceding fifty-nine monthly payments and therefore violates § 1325(a)(5)(B)(iii)(I) of the Bankruptcy Code.

Accordingly, it is

ORDERED that Debtor’s Motion to Modify Confirmed Plan (Doc. No. 35) is denied.

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The Clerk is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.